

MEMORANDUM OF AGREEMENT
BETWEEN
THE U.S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
AND
THE DEPARTMENT OF THE ARMY

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("MOA") is entered into by and between the U.S. Department of the Army ("DA") and the U.S. Department of Justice, Immigration and Naturalization Service ("INS") ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA assistance to INS. Such assistance may include providing support services including, but not limited to, planning, design, upgrading or construction of facilities designated by INS, modifications or repair of facilities, underground storage tank (UST) removal, disposal and installation, environmental assessments and hazardous materials/waste management programs. This MOA is entered into pursuant to the Economy in Government Act (31 U.S.C. § 1535), Department of Justice Appropriations Act, 1991, Pub. L. No. 101-515, Title II, 104 Stat. 2101, 2113 (1990), Department of Justice Appropriations Act, 1994, Pub. L. No. 103-121, 107 Stat. 1153, or such other appropriation as may be applicable to funds utilized under this MOA and 8 USC § 1103 which charges the Attorney General with the administration and enforcement of immigration and naturalization and confers upon the Attorney General the authority to perform all acts deemed necessary for carrying out such authority. Inherent in this authority is the authority to construct, rehabilitate, operate and maintain facilities.

ARTICLE II - SCOPE

Goods and services which the DA may provide under this MOA include, but are not limited to the following:

- architectural and engineering services, including architectural, civil, mechanical, electrical and structural engineering, construction supervision and planning;
- engineering support services including design estimates, engineering calculations, value engineering, bid evaluation, plan

- and specification review, vendor submittal review, environmental impact (EI) assessment and energy studies;
- hazardous materials management, study, and assessment, and remediation;
- real estate services; and
- such other related goods or services as may be agreed upon in the future.

Goods and services provided by the DA relating to UST removal, disposal and installation, environmental assessments and hazardous materials/waste management programs are intended to assist the INS in meeting its requirements under the Resource Conservation Recovery Act ("RCRA") (42 U.S.C. §§ 6901-6991h) and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act ("SARA") (42 U.S.C. §§ 9601-9675).

Nothing in this MOA shall be construed to require the INS to use the DA or to require the DA to provide any goods or services to the INS, except as may be set forth in Work Orders ("WO(s)").

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the DA and the INS, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on WOs.

ARTICLE IV - WORK ORDERS

In response to requests from the INS for DA assistance under this MOA, the DA and the INS shall conclude mutually agreed upon written WOs, which shall include the following:

- a detailed scope of work statement;
- schedules;
- funding arrangements, including whether payment shall be in advance or by reimbursement;
- the amount of funds required and available to accomplish the scope of work as stated above;

- the INS's fund citation and the date upon which the cited funds expire for obligation purposes;
- identification of individual project managers;
- types and frequencies of reports;
- identification of which party is to be responsible for government-furnished equipment, contract administration, records maintenance, rights to data, software and intellectual property, and contract audits;
- procedures for amending or modifying the WO;
- Identification of any Federal Information Processing Standards related equipment, materials and services; and
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

Goods or services shall be provided under this MOA only after an appropriate WO has been signed by a representative of each party authorized to execute that WO. Upon signature by each parties' representative, a WO shall constitute a valid Economy in Government Act order. In the case of conflict between this MOA and a WO, this MOA shall control.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of the Army

The DA shall provide the INS with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in WOs.

The DA shall ensure that only authorized DA representatives sign WOs.

The DA shall use its best efforts to provide goods or services either by contract or by in-house effort.

The DA shall provide detailed periodic progress, financial and other reports to the INS as agreed to in the WO. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

The DA shall inform the INS of all contracts entered into under each WO.

B. Responsibilities of the INS

The INS shall certify, prior to the execution of each WO under this MOA, that the WO complies with the requirements of the Economy in Government Act.

The INS shall pay all costs associated with the DA's provisions of goods or services under this MOA and shall certify, at the time of signature of a WO, the availability of funds necessary to accomplish that WO.

The INS shall ensure that only authorized INS contracting officers sign WOs.

The INS shall develop draft WOs to include scope of work statements.

The INS shall use its best efforts to obtain for the DA all necessary real estate interests and access to all work sites and support facilities, and shall perform all coordination with and obtain any permits from state and local agencies, unless otherwise specified, as necessary during the execution of each WO.

The INS, as owner and generator, shall retain legal liability, as between the INS and the DA and its contractors, for all hazardous substances and wastes associated with work under this MOA.

ARTICLE VI - FUNDING

The INS shall pay all costs associated with the DA's provision of goods or services under this MOA. For WOs estimated to cost more than \$250,000 total or \$50,000 in contracts, an approved funding document shall be in-place prior to initiating any work. The DA will prepare a Standard Form (SF) 1080 (Voucher for Transfers between Appropriations and/or Funds) and bill the INS in advance. For WOs valued at less than these amounts, the DA shall bill the INS monthly for costs incurred, using SF 1080 and the INS shall reimburse the DA within 30 days of receipt of the voucher.

The DA agrees that it will use its best efforts to remain within the level of funding associated with each WO. In furtherance of this goal, the DA shall review, prior to signing the WO, the scope of work to be accomplished pursuant to the WO and make its best estimate of the cost of the goods or services to be provided pursuant to that WO. If the estimated cost exceeds the INS's available funding for that WO, the DA agrees to negotiate with the INS to adjust the scope of work to a level commensurate with the INS's available funding.

If, during performance of a WO, the DA forecasts its actual costs under the WO to exceed the amount of funds available under that WO, it shall promptly notify the INS of the amount of additional funds necessary to complete the work under that WO. The INS shall either provide the additional funds to the DA, or require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that WO.

Within 90 days of completing the work under a WO, the DA shall conduct an accounting to determine the actual costs of the work and present it to INS in the agreed upon format and detail. Within 30 days of completion of this accounting, the DA shall return to the INS any funds advanced in excess of the actual costs as then known, unless there are unsettled claims or anticipated change orders, or the INS shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the INS's duty in accordance with Article XI to pay for any costs, such as contract claims or other liability, which may become known after the accounting.

ARTICLE VII - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the DA shall be governed by DA policies and procedures.

ARTICLE VIII - MANIFESTS AND OTHER DOCUMENTS

DA personnel are authorized to execute all manifests and related documents, Federal and state, on behalf of the INS that pertain to work performed under this MOA by the DA or its contractors. DA personnel shall annotate the manifests and related documents with the phrase "On behalf of the Immigration and Naturalization Service." If applicable state regulations do not permit the DA to sign such documents on behalf of the INS, the DA shall contact the INS representative for specific guidance. Upon physical completion of work under the WO, the DA shall forward manifests and related documents to the INS. The DA shall retain contract-related documents.

ARTICLE IX - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with federal law and the terms of the individual contract. The DA shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613). The U.S. Army Corps of Engineers Board of Contract Appeals ("ENG BCA") is designated as the appropriate board of contract appeals. In lieu of appealing to the ENG BCA, the contractor may bring an action directly to the United States Court of Federal Claims.

The DA shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The DA shall notify the INS of any such litigation and afford the INS an opportunity to provide comments on the litigation proceedings and any resulting settlement negotiations.

ARTICLE X - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the INS and the DA shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget.

ARTICLE XI - LIABILITY

If liability of any kind is imposed on the United States relating to the DA's provision of goods or services under this MOA, the DA will accept accountability for its actions, but the INS shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs.

ARTICLE XII - PUBLIC INFORMATION

Justification and explanation of the INS programs before Congress and other agencies, departments, and offices of the federal Executive Branch shall be the responsibility of the INS. The DA may provide, upon request, any assistance necessary to support the INS's justification or explanations of the INS programs conducted under this MOA. In general, the INS is responsible for all public information regarding the INS projects. The DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The INS or the DA shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to WOs under this MOA.

ARTICLE XIII - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between the INS and the DA.

B. Survival

The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE XIV - AMENDMENT, MODIFICATION AND TERMINATION

This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective upon the


sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the INS shall continue to be responsible for all costs incurred by the DA under this MOA and for the costs of terminating, closing out or transferring any on-going contracts.

ARTICLE XV - EFFECTIVE DATE

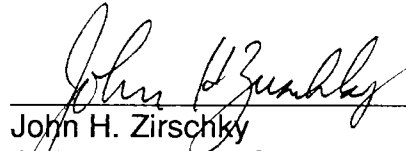
This MOA shall become effective when signed by both the INS and the DA.

U.S. Department of Justice
Immigration and Naturalization Service

U.S. Department of the Army



Martin H. Duby
Associate Commissioner
Human Resources and Administration
Immigration and Naturalization Service



John H. Zirschky
Acting Assistant Secretary of the Army
(Civil Works)

DATE: 10/7/94

DATE: 9/19/94